

104TH CONGRESS
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S. 1619

To amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1996

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Music Licensing
5 Reform Act of 1996”.

1 **SEC. 2. EXEMPTION OF COPYRIGHT INFRINGEMENT FOR**
2 **PERFORMANCE OF NONDRAMATIC MUSICAL**
3 **WORKS IN SMALL COMMERCIAL ESTABLISH-**
4 **MENTS.**

5 (a) IN GENERAL.—Section 110 of title 17, United
6 States Code, is amended—

7 (1) in the matter preceding paragraph (1) by
8 inserting “(a)” before “Notwithstanding”;

9 (2) by amending paragraph (5) to read as
10 follows:

11 “(5)(A) communication of a transmission em-
12 bodying a performance or display of a work (except
13 a nondramatic musical work) by the public reception
14 of the transmission on a single receiving apparatus
15 of a kind commonly used in private homes, unless—

16 “(i) a direct charge is made to see or hear
17 the transmission; or

18 “(ii) the transmission thus received is fur-
19 ther transmitted to the public; or

20 “(B) communication of a transmission embody-
21 ing a performance or display of a nondramatic musi-
22 cal work by the public reception of the transmission
23 on the premises of a small commercial establish-
24 ment, unless—

25 “(i) a direct charge is made to see or hear
26 the transmission; or

1 “(ii) the transmission thus received is fur-
 2 ther transmitted to the public;” and

3 (3) by adding at the end thereof the following
 4 new subsection:

5 “(b)(1) For purposes of subsection (a)(5)(B), the
 6 Register of Copyrights shall define the term ‘small com-
 7 mercial establishment’ by regulation, which shall include
 8 specific, verifiable criteria. Such criteria may relate to—

9 “(A) the area of the establishment, including
 10 whether the establishment is of sufficient size to jus-
 11 tify, as a practical matter, a subscription to a com-
 12 mercial background music service;

13 “(B) the kind, number, and location of equip-
 14 ment used;

15 “(C) the gross revenue of the establishment;

16 “(D) the number of employees; and

17 “(E) other relevant factors.

18 “(2) The definition of small commercial establish-
 19 ment shall not result in an exemption to the right of public
 20 performance or to the right of public display the scope
 21 of which exceeds that permitted under the international
 22 treaty obligations of the United States.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 24 Chapter 1 of title 17, United States Code, is amended—

1 (1) in section 111(a)(2) by striking out “section
 2 110” and inserting in lieu thereof “section 110(a)”;
 3 (2) in section 112(d) by striking out “section
 4 110(8)” each place such term appears and inserting
 5 in each such place “section 110(a)(8)”; and
 6 (3) in section 118(d)(3) by striking out “section
 7 110” and inserting in lieu thereof “section 110(a)”.

8 **SEC. 3. NEGOTIATIONS AND LICENSING BETWEEN PROPRI-**
 9 **ETORS AND PERFORMING RIGHTS SOCI-**
 10 **ETIES.**

11 (a) IN GENERAL.—The provisions of title 17, United
 12 States Code, are amended by adding after chapter 11 the
 13 following new chapter:

14 **“CHAPTER 12—NEGOTIATIONS AND LI-**
 15 **CENSING BETWEEN PROPRIETORS**
 16 **AND PERFORMING RIGHTS SOCIETIES**

“Sec.

“1201. Definitions.

“1202. Code of conduct.

“1203. Access to repertoire.

17 **“§ 1201. Definitions**

18 “For purposes of this chapter, the term—

19 “(1) ‘performing rights society’ means an asso-
 20 ciation, corporation, or other entity that licenses the
 21 public performance of nondramatic musical works on
 22 behalf of copyright owners of such works, such as
 23 the American Society of Composers, Authors and

1 Publishers (ASCAP), Broadcast Music, Inc. (BMI),
2 and SESAC, Inc.; and

3 “(2) ‘proprietor’—

4 “(A) means the owner of a retail establish-
5 ment, restaurant, inn, bar, tavern, or any other
6 similar place of business in which—

7 “(i) the public may assemble; and

8 “(ii) nondramatic musical works may
9 be publicly performed; and

10 “(B) shall not include any owner or opera-
11 tor of—

12 “(i) a radio or television station li-
13 censed by the Federal Communications
14 Commission;

15 “(ii) a cable system or satellite car-
16 rier;

17 “(iii) a cable or satellite carrier serv-
18 ice or programmer;

19 “(iv) a commercial subscription music
20 service; or

21 “(v) any other transmission service.

22 **“§ 1202. Code of conduct**

23 “(a) IN GENERAL.—The Register of Copyrights shall
24 promulgate regulations to establish a code of conduct for
25 the licensing negotiations and practices between a propri-

1 etor and a performing rights society. Such regulations
 2 shall include reasonable disclosure requirements for pro-
 3 prietors and performing rights societies and the content
 4 and form of licensing agreements.

5 “(b) GENERAL ENFORCEMENT.—(1) A proprietor or
 6 performing rights society may file a civil action in any
 7 United States district court of appropriate jurisdiction to
 8 enforce the code of conduct established under this section.

9 “(2) For purposes of an action filed under this sub-
 10 section—

11 “(A) all parties shall be deemed to have ex-
 12 hausted all administrative remedies; and

13 “(B) the court shall conduct a trial de novo
 14 without an agency record.

15 “(c) ENFORCEMENT IN ACTIONS INVOLVING LICENS-
 16 ING AGREEMENTS.—(1) This subsection applies to any
 17 civil action filed under this section to enforce the code of
 18 conduct in which a proprietor and a performing rights so-
 19 ciety have a licensing agreement.

20 “(2) If a proprietor violates a provision of the code
 21 of conduct, the court shall assess a civil fine against the
 22 proprietor, payable to the performing rights society, equal
 23 to the cost of the applicable annual license fee.

24 “(3) If a performing rights society violates a provi-
 25 sion of the code of conduct, the court shall order the soci-

1 ety to grant a license to the proprietor for the nondramatic
 2 public performance of musical works in the repertoire of
 3 the society at no fee for a period of 1 year beginning on
 4 the date on which judgment is entered.

5 **“§ 1203. Access to repertoire**

6 “(a) IN GENERAL.—(1) The Register of Copyrights
 7 shall promulgate regulations to ensure that a performing
 8 rights society shall provide reasonable access to its rep-
 9 ertoire so that a person engaged in the public performance
 10 of a nondramatic musical work may determine with rea-
 11 sonable certainty whether the public performance of a par-
 12 ticular work may be licensed by a particular licensor.

13 “(2) Reasonable access to repertoire under this sec-
 14 tion shall not include access to works rarely publicly per-
 15 formed.

16 “(b) ENFORCEMENT.—(1) A proprietor or perform-
 17 ing rights society may file a civil action in any United
 18 States district court of appropriate jurisdiction to enforce
 19 the regulations promulgated under this section.

20 “(2) For purposes of an action filed under this sec-
 21 tion—

22 “(A) all parties shall be deemed to have ex-
 23 hausted all administrative remedies; and

24 “(B) the court shall conduct a trial de novo
 25 without an agency record.

1 “(c) RESTRICTIONS ON PERFORMING RIGHTS SOCI-
 2 ETY NOT IN COMPLIANCE WITH REGULATIONS.—(1) A
 3 performing rights society may not—

4 “(A) file, be a party, or pay the costs of any
 5 party in any civil action alleging the infringement of
 6 the copyright in a work described under paragraph
 7 (2); or

8 “(B) charge a fee under any per programming
 9 period license for a work described under paragraph
 10 (2).

11 “(2) A work referred to under paragraph (1) is any
 12 work in such performing rights society’s repertoire that
 13 is not identified and documented as required by the regu-
 14 lations promulgated under this section.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 16 The table of chapters for title 17, United States Code,
 17 is amended by adding after the item relating to chapter
 18 11 the following:

**“12. Negotiations and licensing between proprietors and
 performing rights societies 1201”.**

19 **SEC. 4. REPORT ON CONSENT DECREE.**

20 (a) IN GENERAL.—No later than 1 year after the
 21 date of the enactment of this Act, the Register of Copy-
 22 rights shall submit a report to the Senate Committee on
 23 the Judiciary and the House of Representatives Commit-
 24 tee on the Judiciary on the administration by the United

1 States District Court for the Southern District of New
 2 York of the consent decree of March 14, 1950, in United
 3 States v. American Society of Composers, Authors, and
 4 Publishers, 1950 Trade Cas. ¶62,595 (S.D.N.Y. 1950)
 5 and the consent decree of December 29, 1966, in United
 6 States v. Broadcast Music, Inc., 1966 Trade Cas. ¶71,941
 7 (S.D.N.Y. 1966).

8 (b) CONTENTS.—The report under this section shall
 9 include—

10 (1) any recommendation for improvements so
 11 that adjudication under the consent decree may be
 12 less time-consuming and more cost-effective, espe-
 13 cially for parties with fewer resources; and

14 (2) a determination whether a system of local
 15 or regional arbitration should be implemented.

16 **SEC. 5. STATE COPYRIGHT LICENSING LAWS PREEMPTED.**

17 Section 301 of title 17, United States Code, is
 18 amended by adding at the end the following:

19 “(g)(1) Any law, statute, or regulation of any State
 20 or local government which requires a performing rights so-
 21 ciety to license copyrighted musical compositions to a pro-
 22 prietor in a particular manner not required by this title,
 23 or to conduct such society’s business in any manner not
 24 applicable to all businesses as a general manner, shall be

1 deemed to be preempted by subsection (a) and of no force
2 or effect.

3 “(2) For purposes of this subsection, the terms ‘pro-
4 priator’ and ‘performing rights society’ have the same
5 meanings as such terms are defined under section 1201.”.

6 **SEC. 6. RULE OF CONSTRUCTION.**

7 Nothing in this Act shall be construed to relieve any
8 performing rights society of any obligation under any con-
9 sent decree or other court order governing the operation
10 of such society, as such decree or order—

11 (1) is in effect on the date of the enactment of
12 this Act;

13 (2) may be amended after such date; or

14 (3) may be issued or agreed to after such date.

15 **SEC. 7. EFFECTIVE DATE.**

16 This Act shall take effect 90 days after the date of
17 the enactment of this Act.

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